IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2593 of 2007()

CRIME NO.298/2007 OF PARASSALA POLICE STATION

PETITIONER: ACCUSED

DR. G.RAJUKUTTY, AGED 54 YEARS,
S/O. D.GEORGE, CHIEF MEDICAL OFFICER,
GOVERNMENT AYURVEDA HOSPITAL, PARASSALA,
RESIDING AT 'BATHESDA', VATTAVILA P.O.,
NEYYATTINKARA.

BY ADV. SRI.D.KISHORE

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
PARASSALA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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CR.M.C.No. 2593 of 2007

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Dated this the 16th day of August, 2007

ORDER

The petitioner faces allegations, inter alia, under Section 3(1) (xi) and (xii) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act . According to the petitioner he is absolutely innocent. Allegations raised are without any justification. The petitioner is unable to seek anticipatory bail in view of Sec.18 of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The petitioner apprehends that if the petitioner appears before the learned Magistrate and seeks regular bail his application for regular bail may not considered on merits as the offence is triable exclusively by the court of sessions. In these circumstances the petitioner has rushed to this Court with a prayer that appropriate directions may be issued to ensure that the petitioner's application for bail is considered on merits in accordance with law and expeditiously.

2. No special and specific directions appear to be necessary. This Court time and again has reiterated that the mere fact that the offence is triable by a Court of Session(Special Court) under Sec.14 of Act will not justify the abdication of powers by the Magistrate under Section 437 Cr.P.C. The position has been reiterated in **Ali v. State of**

Kerala [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250). I have no reason to assume that the learned Magistrate would not consider the petitioner 's application for bail on merits, in accordance with law and expeditiously. The decision in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].further mandates that such application must be considered expeditiously. I am satisfied that appropriate directions can be issued.

3. This application is, in these circumstances, allowed. The learned Magistrate must consider the application for bail to be filed by the petitioner on his surrender before the learned Magistrate on merits, in accordance with law and expeditiously – on the date of surrender itself . The petitioner shall be at liberty to give notice to the prosecutor in advance before he surrenders.

(R.BASANT, JUDGE)

sj